

## The Legal News.

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### WHAT IS A LIBEL ?

On the last day of the Easter sittings judgment was given by the court of appeal in the *Capital and Counties Bank v. Henty & Son*, which is a case of much interest. The defendants are brewers at Chichester, where the plaintiffs have a branch of their bank. It seems formerly to have been the practice for the Chichester branch to cash all checks drawn on other branches of the bank in favor of Messrs. Henty by their tenants and others. A new manager, however, introduced a new practice, and declined to cash the checks drawn on other branches unless the drawers were in some way guaranteed by the brewers. Thereupon Messrs. Henty sent the following circular to their tenants: "Messrs. Henty & Son hereby give notice that they will not accept in payment any check drawn on any of the branches of the Capital and Counties Bank." The bank complained of this document as a libel, and brought an action against Messrs. Henty. The action was tried before Lord Coleridge and a special jury. The case was left to the jury; but they were unable to agree, and were discharged. The matter did not rest there; but Messrs. Henty courted judgment, and asked the common pleas division to enter it in their favor, on the ground that the statement was not a libel in law. Mr. Justice Grove and Mr. Justice Denman declined this application, and the defendants appealed against their decision. Lord Justice Thesiger now expresses his agreement with the common pleas, while Lords Justices Brett and Cotton are of the contrary opinion. The question whether Messrs. Henty's circular was a libel has, therefore, been before three tribunals, only one of which has agreed about it, and this one has been overruled. A special jury have been unable to come to a conclusion; four judges (including Lord Coleridge in the enumeration) think that it may be a libel, while two think that it can by no possibility be libellous.

The conduct both of Messrs. Henty and the bank throughout the transaction was natural enough. Bankers, as a rule, do not, for obvious

reasons, cash checks at any other branch than that upon which they are drawn. An exception, however, had been made by the Chichester bank, and Messrs. Henty were inconvenienced by the privilege being withdrawn. They had a right to decline to take any checks they pleased from their tenants. Whether or in what language they were entitled to tell their tenants their intentions in advance is the issue in the case. That the bank should complain of the circular is explicable enough. In the first place, it had a tendency to decrease the bank's business, because the tenants would be not unlikely to withdraw their accounts, simply because they could not use them for paying their rent. On this head there could, of course, be no legal claim. But, secondly, the circular, to say the least, was not likely to have an assuring effect on the minds of those who read it. Customers are a timid race, and even less than Messrs. Henty wrote might, at a time of panic, produce a run on the bank. On the other hand, the circular complained of was in form the barest possible notice. It simply records Messrs. Henty's intentions with regard to the payment of debts due them. The inference at once drawn from it is, that the brewers were not on the best of terms with the bankers, which was true. Can it be fairly inferred, from the circular, that the bank was unable to meet its engagements, which was the innuendo laid? The document does not in terms contain the statement of this or any other existing fact, from the beginning to the end; but a libel may be conveyed by suggestion equally as by plain statement. The decision of the court of appeal amounts to this: that, if the jury thought the circular would convey to the mind of the reader that the checks of the Capital and Counties Bank were of doubtful value, and it was best to have no dealings with it, they could not find the circular to be libellous. It may be said that a check is not a security on which the bank is liable. That is no doubt true; but, practically, what was said was the same as if one merchant had given notice of his refusal to take another merchant's paper. If a man has his money in a bank, upon which he gives a check, and the bank breaks, the effect is at least as embarrassing to all concerned as if he had given the bill of another person who failed. The judges of the common pleas declined to say that the infer-